

***United States – Safeguard Measure on
Imports of Lamb Meat from New Zealand and Australia (WT/DS 177 and 178)***

**Closing Statement of the United States at the
First Meeting of the Panel**

May 25-26, 2000

Mr. Chairman, Members of the Panel:

1. On behalf of the United States delegation, I would like to thank the Panel for taking the time during the past two days to hear our views on this important proceeding, and for giving us the opportunity today to make this closing statement. I have only a few points to make this morning.

2. First, New Zealand and Australia make several claims that find no textual support in the Safeguards Agreement. Indeed, it is difficult to see how the complainants are reading the same Safeguards Agreement as the one agreed to by the Uruguay Round negotiators. According to the complainants, the Safeguards Agreement prescribes all manner of detail about the investigation by the competent authority and the decision on the measure to apply. However, complainants are unable to support these claims by any provision in the text. For example, in the first submissions, New Zealand, but not Australia, argues that Article 5.1 requires a Member to apply the “least trade restrictive” measure available. But the text of Article 5.1 says that a Member shall apply a measure “only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment,” not that a Member shall identify and apply the “least trade restrictive” measure. Similarly, complainants argue that the United States was required to “justify” its choice of safeguard measures. But once again, Article 5.1 says nothing of the sort. Complainants also

claim that Article 3.1 requires a Member to publish the reasons it imposed a particular safeguard measure. But Article 3.1, by its plain terms, applies to the investigation conducted by a competent authority, not to a Member's decision to apply a safeguard measure. Finally, Australia suggested in its oral presentation yesterday (at ¶ 71) that the President of the United States was somehow required to impose the USITC plurality's suggested remedy. But nothing in the Safeguards Agreement requires a competent authority to recommend a safeguard measure, let alone requires a Member to adopt such a recommendation.

3. These points are important because the WTO is a treaty-based system, based on the mutual consent of the Members as reflected in the text of the WTO Agreements. Therefore, if there is no textual basis for complainants' various "tests" and "requirements", then the Members of the WTO have not consented to be bound by them. Accordingly, the United States urges the Panel to interpret the terms that the drafters actually used, not the terms that Australia and New Zealand wish they had used.

4. I would now like to respond briefly to certain points raised by complainants regarding the USITC's investigation and determination.

5. The USITC's affirmative threat determination was soundly based on the record developed by the USITC in its investigation, and the USITC findings and conclusions as set out in its report met all the requirements of Articles 3 and 4 of the Safeguards Agreement. The United States' First Written Submission did not "concoct" or "cobble together" a new version of the USITC's findings to fill in "gaps" or create a more defensible decision. It did not need to.

6. The United States at ¶¶ 79-82 summarized four central findings of the USITC report that were essentially uncontested by the complainants:

7. First, imports of lamb meat from Australia and New Zealand surged late in the period of investigation, and this surge was projected to continue through 1999.

8. Second, the mix of imported lamb meat imports shifted during the investigation, from frozen lamb meat to fresh/chilled lamb meat, and from smaller cuts to larger cuts, the form and cut size of lamb meat most similar to that produced and marketed by domestic lamb meat producers. This trend was projected to continue through 1999.

9. Third, this surge in imports, and the change in mix of imported product, led to falling domestic prices for lamb meat in 1997 and interim 1998, and the USITC found that these trends would continue in the future.

10. Fourth, economic indicators relating to the health of the domestic industry, which had stabilized in 1996 after the termination of the U.S. Wool Act payments, deteriorated sharply in 1997 and interim 1998, when imports surged. This deterioration was predicted to continue into 1999. In particular, industry profitability fell sharply in 1997 and interim 1998.

11. Contrary to New Zealand's contention yesterday, this is all stated in the USITC's written findings. The recent increase in imports and projected further increase was described on pages I-15 and 23 of the USITC report. The change in product mix and projected further change was described on pages I-22 and 23. The fall in prices in 1997 and interim 1998 and linkage to increased imports, and likely impact on prices of further increases in imports, was described on pages I-23-24. The fact that the domestic industry had stabilized in 1996 after termination of the Wool Act, the fact that the condition of the domestic industry had deteriorated and that further deterioration was projected, and the linkage between the deterioration, the projected further deterioration, and the surge in lamb meat imports, are all described on pages I-17 to 21 and on I-

23 to 26.

12. Thus, the United States had no need to create a revised story. The story was in the USITC report. In case there were any doubt, the United States urges the Panel to rely simply on the USITC report.

13. I would now like to turn briefly to the USITC's causation finding. In asserting that the USITC found increased imports to be one of several factors causing the threat of serious injury, New Zealand fails to consider the USITC's evaluation of each of those factors. While the USITC expressed its finding in terms of the U.S. statute, it is clear from the USITC's evaluation of the several possible causes that increased imports were the *only cause of any significance* of the deterioration in the condition of the domestic industry in 1997 and interim 1998, and the projected continuation of this deterioration in 1999. The USITC did not attribute the effects of other factors to increased imports.

14. Finally, as the United States made clear in its First Written Submission and in its oral statement yesterday, the USITC report demonstrates –

(1) that the USITC conducted a thorough investigation that met all the requirements of Article 4.2(a) of the Safeguards Agreement. As the United States stated in its First Written Submission and again yesterday, the Safeguards Agreement does not prescribe any specific methodology that an authority must follow in demonstrating the link between increased imports and the threat of serious injury;

(2) that developments relating to the change in import mix and size were

unforeseen by the United States at the time it negotiated and implemented its most recent tariff concession on lamb meat imports;

(3) that the USITC properly defined the domestic industry, and that the USITC would have reached the same conclusion if it had limited the industry to lamb meat packers and breakers; and

(4) that the USITC found that the serious injury was clearly imminent.

15. Mr. Chairman, Members of the Panel, I discussed at length yesterday the importance of Article XIX and the Safeguards Agreement as critical components of trade liberalization. We would like to close by asking the Panel to keep that perspective in mind in addressing this proceeding, and in particular when addressing the arguments by Australia and New Zealand that these provisions should be narrowly construed.

16. Finally, Mr. Chairman, it bears repeating that Australia and New Zealand have the burden of proof in this proceeding, a burden that the United States considers they have not met in any respect. We respectfully ask this Panel to so find in the report that it prepares.

17. This concludes our presentation today.